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Supreme Court, U.S.
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# In The

# Supreme Court Of The United States

OCTOBER TERM, 1990

**GAIL WANAT**
*Petitioner,*

v.

**JEFFREY OSSEN**
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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## QUESTION PRESENTED

UNDER THE SUPREMACY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES, ARTICLE VI, CLAUSE 2, DOES THE HIGHEST CONNECTICUT STATE COURT HAVE A DUTY TO ASSUME JURISDICTION TO DECIDE THE FEDERAL CONSTITUTIONALITY OF THE CONNECTICUT SUMMARY PROCESS STATUTES AS APPLIED TO MOBILE HOME EVICTIONS WHERE FEDERAL FOURTEENTH AMENDMENT ISSUES OF DUE PROCESS INCLUDING NOTICE AND AN OPPORTUNITY TO BE HEARD WERE PROPERLY PRESENTED AND RAISED BEFORE THE COURT IN ACCORD WITH LOWER STATE COURT PROCEDURE?

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The petitioner, Gail Wanat, respectfully prays that a writ of certiorari issue to review a decision of the Connecticut Supreme Court entered on February 5, 1991.

OPINION BELOW

The opinion of the Connecticut Supreme

Court is reported at 217 Conn. 313, 585 A.2d 685 (1991) and is printed in Appendix A, infra, page 1A. The opinion of the Connecticut Appellate Court is reported at 21 Conn. App. 40, 571 A.2d 134 (1990) and is printed in Appendix B, infra, page 20A. The trial court (Gaffney, J.) rendered judgment for possession on November 18, 1988 in the Superior Court, judicial district of New Haven at Meriden, SPM-8807-1674.

## JURISDICTION

The opinion of the Supreme Court of the State of Connecticut, Appendix A, infra, page 1A, was entered on February 5, 1991. Petitioner's Motion to Reargue was denied February 28, 1991. The jurisdiction of this court is invoked under 28 U.S.C. §1257(3).

## QUESTION PRESENTED

I. UNDER THE SUPREMACY CLAUSE OF THE

CONSTITUTION OF THE UNITED STATES, ARTICLE VI, CLAUSE 2, DOES THE HIGHEST CONNECTICUT STATE COURT HAVE A DUTY TO ASSUME JURISDICTION TO DECIDE THE FEDERAL CONSTITUTIONALITY OF THE CONNECTICUT SUMMARY PROCESS STATUTES AS APPLIED TO MOBILE HOME EVICTIONS WHERE FEDERAL FOURTEENTH AMENDMENT ISSUES OF DUE PROCESS INCLUDING NOTICE AND AN OPPORTUNITY TO BE HEARD WERE PROPERLY PRESENTED AND RAISED BEFORE THE COURT IN ACCORD WITH LOWER STATE COURT PROCEDURE.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. VI, clause 2
U.S. Const. amend. V
U.S. Const. amend. XIV, §1

The Connecticut summary process statutes, as applied to mobile homes in Connecticut, the underlying constitutionality of which is being tested, are as follows:

C.G.S. §21-80
C.G.S. §47a-23
C.G.S. §47a-23a

## STATEMENT OF THE CASE

This is a landlord-tenant case brought in state court to evict (a) the tenant owner of a mobile home, and (b) the mobile home itself from the lot site owned by the landlord. Certiorari is being applied for because the courts of the state of Connecticut have violated the Supremacy Clause of the Constitution of the United States, article VI, clause 2 by refusing jurisdiction to decide the procedural federal due process issues under the Fifth and Fourteenth Amendments.

At the trial level, the tenant properly raised, by special defense, the issue that the state of Connecticut's eviction statutes (C.G.S. §§47a-23, 47a-23a, and 21-80) violated the procedural due process provisions of the Fifth and Fourteenth Amendments of the Federal Constitution as

applied to mobile homes for the reason the statutes did not give notice and an opportunity to be heard on the issue of loss of equity in the mobile home under circumstances where the market value of the mobile home on the lot with a lease is approximately $20,000, while off the lot and/or without a lease, it has a value of only $1,000.

Briefly, the argument was that the $20,000 loss of equity in the mobile home is a quasi-real property interest arising over time and out of experience because mobile homes are no longer mobile and that notice and an opportunity to be heard on the issue of possession only was not adequate to protect this equitable property interest. The tenant also argued that the said $20,000 equity is now an equitable

property interest deserving federal constitutional protection because it is recognized by state statute as follows:

(a) C.G.S. §21-70(b) requires the mobile home park landlord to continuously offer the mobile home owner a one-year lease equivalent to a "right to continual occupancy of the site" Eamiello v. Liberty Mobile Home Sales, Inc., 208 Conn. 620, 648, 546 A.2d 805 (1988),

(b) C.G.S. §21-79 provides for sale of the mobile home on the site to protect this $20,000 equity interest in a mobile home (see excerpt from Eamiello, Ibid., and printed in Appendix K, infra, at page 45A).

(c) C.G.S. §21-67a(b) converts the said continuous possessory interest into an interest analogous to a real property interest by requiring a certificate of title to the mobile home be recorded in the town

clerk's office in the form of a warranty deed (C.G.S. §21-67a(c)(d) and C.G.S. §47-36c), and

(d) C.G.S. §12-412(c)(b) requires that sellers of mobile homes on the lot pay real property conveyance tax on the $20,000 market value of the mobile home on the site with a lease rather than pay sales taxes on the $1,000 value of the mobile home on the site without a lease or off the site altogether.

At the trial court level, it soon developed that if the court found that the said mobile home could not be sold out of the summary process procedure on the site, with its lease, in accord with C.G.S. §21-79, the federal constitutional issue of procedural due process might never be reached. However, the trial court decided that the statutory procedure for summary process of

mobile homes in Connecticut did not permit sale of the mobile home in accord with C.G.S. §21-79 out of and/or during the eviction procedure and, then having reached the federal constitutional issue of procedural due process, refused to accept jurisdiction and did not decide the issue in flat contradiction of the federal Supremacy Clause.

The trial court entered judgment for the respondent and ruled that constitutional issues could not be raised in a summary process case. Petitioner appealed in a timely fashion, however, the Appellate Court confirmed the trial court's ruling that the mobile home could not be sold during the eviction procedure and that the constitutional issues could not be raised during the course of a summary process

action. Its reasoning was that said proceeding is limited to the statutory issue of possession only. Ossen v. Wanat, 217 Conn. 313, 585 A.2d 685. Upon appeal to the Supreme Court of the state of Connecticut, that Court accepted certification on two issues:

(1) whether sale could be allowed on site with lease during the eviction action, and

(2) on the issue of whether the refusal of the trial court to consider the constitutional issue was in error. Ossen v. Wanat, 217 Conn. 313, 585 A.2d 685.

Upon review, the Connecticut Supreme Court concurred with the lower appellate court's holding that the state trial court was not required to consider the properly raised state and federal constitutional issues even though the constitutional issues were reached once the Court decided

that sale on the site with the lease would not be allowed during the eviction procedure. As the dissent at the Connecticut Supreme Court level pointed out, having been reached, the federal constitutional issue should have been decided because, while the Connecticut Supreme Court may or may not be entitled to refuse jurisdiction to decide Connecticut Constitutional issues, it is not free to decline jurisdiction of federal constitutional issues, as set forth below.

REASON FOR GRANTING THE WRIT

The contents of the Constitution of the United States and the Amendments thereto are the supreme law of the country pursuant to U.S. Const. art. VI, clause 2. "The supremacy of the Constitution as law is declared without qualification and is absolute." 16 Am. Jur. 2d, Constitutional

Law §70, citing Carter v. Carter Coal Co., 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160. Accordingly, the individual states may not infringe upon the enjoyment of a federally created right. Amalgamated Ass'n of St. Elec. Fy. & Motor Coach Emp. of America, Division 998 v. Wisconsin Employment Relations Board, Wisconsin, 340 U.S. 383, 71 S.Ct. 359, 95 L. Ed. 364.

In the action which this Court is currently asked to consider, petitioner went before the highest court of the state of Connecticut and requested that the Court determine whether Connecticut's summary process statutes, found at C.G.S. §§21-80, 47a-23, 47a-23a, met constitutional muster under the procedural process requirements of Fifth and Fourteenth Amendments of the federal constitution. Instead of

fulfilling its federal mandate under the Supremacy Clause and deciding the constitutional due process issue, the Connecticut Supreme Court, as had the appellate and trial courts below, refused to accept jurisdiction over the federal constitutional claim. In a decision dated February 5, 1991, the Connecticut Supreme Court accepted the Appellate Court's analysis that a "complex constitutional issue ... Ha[s] no place in [a] summary process action," Ossen v. Wanat, 21 Conn. App. 40 at 46 (1990) and thus the trial court's decision to refuse to review the constitutional issue was valid. Ossen v. Wanat, 217 Conn. 313 at 318 (1991).

Clearly, under the Supremacy Clause and decisions of this Court as well as courts of the federal and state systems, a state court must accept jurisidiction when it is

presented with an issue arising out of the federal constitution. Howlett v. Rose 496 U.S. ___ , 110 S. Ct. 2430, 110 L. Ed. 2d 332, (1990). In Howlett, the Florida petitioner filed a claim under 42 U.S.C. §1983 against a local school board and three school officials. The Circuit Court, affirmed by the District Court of Appeals, held that even though Florida had enacted a statutory waiver of its sovereign immunity law, said waiver applied only to tort cases and, therefore, any other §1983 case was to be subject to the state sovereign immunity statutes. In Howlett, the petitioner's position that cases brought under 42 U.S.C. §1983 involved federal constitutional issues which, therefore, were not subsumed by a state sovereign immunity defense was rejected by the Florida court of appeals.

According to the court of appeals, because the §1983 action was brought in state court, the state rather than the federal law applied. Howlett v. Rose, Id. at 342-343.

Upon accepting petitioner's challenge to the Florida decision, this Court first analyzed the case in terms of whether the state could severely curtail petitioner's rights under the federally created §1983 statute by substituting a state §1983 statute which severely restricted the federal §1983 rights, Howlett v. Rose, 110 L. Ed. 2d 332 at 346. In making this determination, the Court concluded that the district court decision,

> "raises the concern that the state court may be evading federal law and discriminating against federal causes of action. The adequacy of the state law ground to support a judgment precluding litigation of the federal claim is itself a federal question which we review de novo" Howlett, Id. at 346.

In making its review, this Court found that under the Supremacy Clause state courts do not have the discretion to refuse to accept jurisdiction when a federal constitutional claim is raised. Rather, the state courts have an obligation to enforce the federal laws to the same extent to which they are obligated to enforce their own laws. Howlett, Id. at 347. Thus, based on this principle "[t]he existence of the jurisdiction creates an implication of duty to exercise it." Howlett, Id. at 349, citing Mondou v. New York, N.H. & H.R. Co., 223 U.S. 1, 58, 32 S. Ct. 169, 56 L. Ed. 327, (1912). The fact that a state court finds the federal claim to be inconvenient or confusing is not a valid reason to refuse to adjudicate the federal claim. Howlett, Id. at 351, citing Mondou, Id. Thus, the Howlett Court found that the

Florida court had wrongly refused to consider the §1983 claim and remanded the case.

The refusal of the state courts to apply federal constitutional mandates has arisen in other contexts as well. In Pernell v. Southall Realty, 416 U.S. 363, 94 S. Ct. 1723, 40 L. Ed. 2d 198 (1974), this Court held that a trial court's refusal to grant a jury request, in a landlord-tenant case predicated on nonpayment of rent, was a violation of U.S. Const. amend. VI, 40 L. Ed. 2d 198, 214, and, in Greene v. Lindsey, 456 U.S. 444, 102 S.Ct.1874, 72 L. Ed. 2d 249 (1982), the Court held that due process guarantees attach in a Kentucky entry and detainer action regarding the notice requirements of service of process even when the action is in the nature of a summary procedure. Greene, at 72 L. Ed. 2d

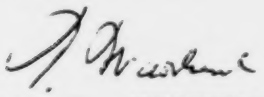
249, 256 footnote 4.

## CONCLUSION

In absolute derogation of its federal mandate and of this Court's precedents, the courts of the state of Connecticut have refused to accept jurisdiction to review a properly raised federal constitutional issue. The Connecticut appellate court claims that said issues were too complex. Ossen v. Wanat, 21 Conn. App. 40, at 46. Federal Constitutional rights are not disposable simply because a state court finds the matter too complex and/or cannot fathom how to analyze a Fourteenth Amendment issue. If this type of reasoning is allowed to prevail, U.S. citizens will have no federal constitutional or statutory rights in state court. For these reasons, it is respectfully submitted that this

petition for a writ of certiorari be granted.

RESPECTFULLY SUBMITTED,
GAIL WANAT



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## APPENDIX

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APPENDIX A

## JEFFREY P. OSSEN *v.* GAIL WANAT ET AL. (13936)

PETERS, C. J., SHEA, GLASS, COVELLO and SANTANIELLO, Js.

The plaintiff sought by way of a summary process action to recover possession of a certain mobile home site leased to the defendants. The trial court rendered judgment awarding possession to the plaintiff, and the defendants appealed to the Appellate Court. The Appellate Court affirmed the judgment of the trial court, and, on the granting of certification, the named defendant appealed to this court. *Held:*

1. As determined by the Appellate Court, the trial court correctly concluded that it was not required to determine within the context of a summary process action the constitutional claims raised by the defendants by way of special defense.
2. The trial court correctly rejected the defendants' claim that, by statute (§ 21-79), they should have been allowed to sell the mobile home on its site during the pendency of the summary process action; § 21-79, which provides, inter alia, that a resident of a mobile home park shall not be

required to remove the mobile home from its site at the time it is sold, nowhere permits a mobile home park resident to use the right to sell the mobile home on site to delay a summary process action.

Argued November 9, 1990—decision released February 5, 1991

Summary process action, brought to the Superior Court in the judicial district of New Haven, Housing Session at Meriden, and tried to the court, *Gaffney, J.;* judgment awarding possession to the plaintiff; thereafter, the court awarded costs and attorney's fees to the plaintiff, and the defendants appealed to the Appellate Court; subsequently, the trial court, *Ripley, J.,* denied a motion for exemption from judgment filed by the defendant Laura Ellis, and the defendants filed an amended appeal with the Appellate Court, *Spallone, Daly* and *Norcott, Js.,* which affirmed the trial court's judgment, from which the named defendant, on the granting of certification, appealed to this court. *Affirmed.*

*F. Woodward Lewis, Jr.,* for the appellant (named defendant).

*Barry T. Pontolillo,* for the appellee (plaintiff).

COVELLO, J. This is a summary process action involving a mobile home site. The trial court, *Gaffney, J.,* rendered judgment for possession in favor of the plaintiff, Jeffrey P. Ossen. The defendants, Gail Wanat, Joseph Driscoll, Eugene Ellis and Laura Ellis, appealed to the Appellate Court. The dispositive issues are: (1) whether the trial court was required to determine the defendants' constitutional claims within the context of a summary process action; and (2) whether the defendants were entitled to sell their mobile home on site pursuant to General Statutes § 21-79 during the pendency of the summary process action. We conclude that the Appellate Court correctly resolved both issues in favor of the plaintiff and therefore affirm the judgment of the Appellate Court.

In 1985, the plaintiff leased to the defendants a mobile home site in Three Oaks Mobilehome Park, Wallingford. On May 14, 1988, the plaintiff served a notice to quit possession upon the defendants on or before June 16, 1988, claiming nonpayment of rent.[1] On July 7, 1988, the plaintiff began the present action alleging the defendants' continuing occupancy of the premises despite the passage of the time designated in the notice to quit and seeking a judgment of possession in accordance with the statute.[2]

On August 15, 1988, the defendants moved for a stay of the proceedings and simultaneously sought permission to sell the mobile home on the leased premises in accordance with General Statutes § 21-79.[3] On August 26, 1988, the trial court, *Stanley, J.*, denied both motions.

On October 21, 1988, the trial court granted the plaintiff's motion to strike the defendants' three special defenses including, inter alia, a claim of an unconstitutional taking, a violation of due process and a denial of equal protection, all in violation of the fifth and four-

[1] General Statutes (Rev. to 1987) § 47a-23 (a) as amended by Public Acts 1987, No. 87-507, § 1, provides: "When a . . . lease of . . . any land upon which a trailer is used or stands . . . terminates [for nonpayment of rent] . . . and the . . . lessor . . . desires to obtain possession . . . of the same . . . he or they shall give notice to each lessee . . . to quit possession of such land . . . at least eight days before . . . the time specified in the notice for the lessee . . . to quit possession . . . ."

[2] General Statutes § 47a-23a (a) provides: "If, at the expiration of the eight days the lessee or occupant neglects or refuses to quit possession or occupancy of the premises, any commissioner of the superior court may issue a writ, summons and complaint . . . which shall set forth facts justifying a judgment for immediate possession or occupancy of the premises and make a claim for possession or occupancy of the premises. . . ."

[3] General Statutes § 21-79 (a) provides in part: "No owner or operator of a mobile manufactured home park shall require a resident who owns a mobile manufactured home which is safe, sanitary and in conformance with aesthetic standards to remove the home from the development at the time such mobile manufactured home is sold . . . ."

teenth amendments to the United States constitution and article first, § 10 of the Connecticut constitution.[4] At the same time, the trial court struck the defendants' counterclaim that sought an injunction restraining the plaintiff's interference with the defendants' sale of their mobile home on the leased premises. On November 18, 1988, the trial court, *Gaffney, J.*, rendered judgment for possession in favor of the plaintiff.

The defendants appealed to the Appellate Court, which thereafter affirmed the judgment of the trial court. Upon the petition of the defendant Gail Wanat, we granted certification limited to the issues of: (1) whether the trial court was required to determine the defendants' constitutional claims within the context of a summary process action; and (2) whether the defendants were entitled to sell their mobile home on

[4] The defendants' constitutional claims were set forth in their first and second "substitute special defenses" as follows: "First Special Defense. . . . 6. The summary process statutory procedure for mobile homes in Connecticut is unconstitutional as applied in this case because the plaintiff's taking of the equitable property interest in the defendant's mobile home is a taking without notice of the interest being taken, a taking without a hearing as to the value of the said equitable interest and, finally, it is a taking without just compensation in violation of Article Five and the due process requirements of notice and an opportunity to be heard of Article Five of the Fourteenth Amendment of the United States Constitution, and including violations of Article I, Section 10 of the Constitution of the State of Connecticut when the defendant is not being allowed to sell her mobile home on the lot.

"Second Special Defense . . . . 6. The summary process statutory procedure for mobile homes in Connecticut is unconstitutional as applied in this case because the plaintiff's taking of the equitable property interest in the plaintiff's [sic] mobile home is also a violation of the equal protection clause of the Fourteenth Amendment because it has the effect of taking an equitable property interest without notice, hearing or compensation as a result of 'summary process action.' It also has the effect of treating mobile home owners differently from all of the other tenants in the state in that the taking of the equitable interest in other homeowners' property requires a foreclosure action, and including violations of Article I, Section [10] of the Constitution of the State of Connecticut when the defendant is not being allowed to sell her mobile home on the lot."

site pursuant to General Statutes § 21-79 during the pendency of the summary process action. We answer both questions in the negative and affirm the decision of the Appellate Court.

I

The defendant's first claim is that the trial court was required to take up and address in the summary process action the constitutional issues raised in their first and second special defenses, and that the Appellate Court should not have concluded that the trial court was not required to do so.

"It has always been the policy of our law to limit the issues in an action of summary process to a few simple ones within the express scope of the statutory provisions." *Webb* v. *Ambler,* 125 Conn. 543, 550–51, 7 A.2d 228 (1939). "Because of the summary nature of this remedy, the statute granting it has been narrowly construed and strictly followed." *Jo-Mark Sand & Gravel Co.* v. *Pantanella,* 139 Conn. 598, 600–601, 96 A.2d 217 (1953). "The purpose of summary process proceedings . . . is to permit the landlord to recover possession on termination of a lease . . . without suffering the delay, loss and expense to which he may be subjected under a common-law action. . . . The process is intended to be summary and is designed to provide an expeditious remedy to the landlord seeking possession." *Prevedini* v. *Mobil Oil Corporation,* 164 Conn. 287, 292, 320 A.2d 797 (1973).

Concededly, statutory modifications have created new rights and remedies within the context of the landlord and tenant relationship. A tenant may now plead by way of special defense, first, that the landlord has breached an implied warranty of habitability,[5] or sec-

[5] General Statutes § 47a-4a provides: "A rental agreement shall not permit the receipt of rent for any period during which the landlord has failed to comply with subsection (a) of section 47a-7 [landlord's responsibilities]."

ond, that the landlord's claim for possession is a retaliatory act motivated by the tenant's attempt to correct substandard conditions on the leased premises.[6] Despite these additional remedies, the legislature, in its recodification and reenactment of the entire summary process chapter, saw fit to leave in place provisions for an abbreviated return day,[7] and an accelerated appearance, pleading and judgment procedure,[8] all of which comport with earlier notions of the summary nature of these proceedings. The fact remains that unless the tenant can prove payment of rent, the existence of a lease, one of the special defenses above, or superior title in the premises, he or she must yield possession.[9]

"We agree with the trial court's conclusion that the constitutional issues that the defendants attempted to

[6] General Statutes § 47a-33 provides in relevant part: "In any action for summary process . . . it shall be an affirmative defense that the plaintiff brought such action solely because the defendant attempted to remedy, by lawful means . . . any condition constituting a violation of any . . . statute or regulation or of the housing or health ordinances of the municipality wherein the premises . . . lie." See also General Statutes §§ 47a-20 and § 47a-20a.

[7] General Statutes § 47a-23a (a) provides in part: "Such complaint may be made returnable six days, inclusive, after service upon the defendant and shall be returned to court at least three days before the return day."

[8] General Statutes § 47a-26 provides in part: "If the defendant does not appear within two days after the return day and a motion for judgment for failure to appear and an endorsed copy of the notice to quit is filed with the clerk, the court shall forthwith enter judgment that the complainant recover possession or occupancy of the premises . . . ."

General Statutes § 47a-26a provides in part: "If the defendant appears but does not plead within three days after the return day, the complainant may file a motion for judgment for failure to plead . . . . If the defendant fails to plead within three days after receipt of such motion by the clerk, the court shall forthwith enter judgment that the complainant recover possession or occupancy with his costs."

General Statutes § 47a-26c provides: "All pleadings, including motions, shall advance at least one step within each successive period of three days from the preceding pleading or motion."

[9] For alternate equitable defenses see *Fellows* v. *Martin*, 217 Conn. 57, A.2d (1991).

raise 'are far beyond the scope of the statutory action that is before the Court.' " *Ossen* v. *Wanat,* 21 Conn. App. 40, 46, 571 A.2d 134 (1990).

II

The defendant next claims that the defendants were entitled to sell their mobile home on its site during the pendency of the summary process action and that the Appellate Court should not have affirmed the trial court's decision not to permit this. In support of her position, the defendant relies upon General Statutes § 21-79. Section 21-79 provides in pertinent part: "(a) No owner or operator of a mobile manufactured home park shall require a resident . . . to remove the home from the development at the time such mobile manufactured home is sold . . . . (e) Any resident wishing to sell his or her home shall request a written statement of the [park] owner's intentions regarding the condition of the home. Within twenty days after receipt of such a request, the owner shall approve the home's condition for resale or deliver a written statement to the resident specifying the reasons" for denying approval. The defendant claims that they have complied with the provisions of § 21-79 and, therefore, have a right to sell the mobile home during the summary process action.

"Section 21-79 protects tenants at mobile home parks from being forced to sell to park owners at a substantial loss and as a consequence benefits many low income people who cannot otherwise afford to purchase more expensive housing." *Eamiello* v. *Liberty Mobile Home Sales, Inc.,* 208 Conn. 620, 648, 546 A.2d 805 (1988), appeal dismissed, 489 U.S. 1002, 109 S. Ct. 1104, 103 L. Ed. 2d 169 (1989). Section 21-79, however, does not lend support to the procedure advanced by the defendant. Section 21-79 nowhere permits a defendant to use its right to sell its mobile home to delay a summary process action. Furthermore, § 21-79 must be read in con-

junction with the rest of the chapter. For example, General Statutes § 21-80 (b) (1) (A) contains a list of permitted circumstances in which a park owner may bring a summary process action and specifically states that "an owner [of a mobile home park] may terminate a rental agreement or maintain a summary process action against a resident who owns his mobile manufactured home only for one or more of the following reasons: (A) Nonpayment of rent, utility charges or reasonable incidental services charges . . . ." Nowhere does § 21-80 include the limitation on a park owner's right to evict a nonpaying tenant as claimed by the defendant.

"[I]t is an elementary rule of construction that all sections of an act relating to the same subject matter should be considered together . . . . Insofar as possible the separate effect of each individual part or section of an act is made consistent with the whole." 2A J. Sutherland, Statutory Construction (4th Ed. 1984) § 47.06. Read together, §§ 21-79 and 21-80 (b) (1) (A) thus permit a resident generally to sell his or her mobile home but preserve the right of a mobile home park owner to evict a resident for nonpayment of rent with thirty days notice. The two sections do not in any way suggest that § 21-79 is to be read to limit the right of a park owner to initiate a summary process action based upon any of the grounds specified in § 21-80 including nonpayment of rent. Furthermore, such a construction is consistent with the intent of the legislature that a summary process action be an accelerated and relatively straightforward procedure. The interpretation advanced by the defendant would create the potential for delay without any express authority in the statute. We conclude that the trial court correctly decided that § 21-79 does not give a party the right to delay a summary process action pending the on-site sale of a mobile home.

The judgment is affirmed.

In this opinion PETERS, C. J., GLASS and SANTANIELLO, Js., concurred.

SHEA, J., concurring. I agree with the conclusion of the majority in Part II that there is no merit in the special defenses and counterclaim of the defendants, which are premised upon a claimed right to continue to occupy the premises despite their failure to pay the rent as agreed. Accordingly, I concur in the affirmance of the judgment of possession.

I disagree, however, with Part I, in which the majority holds that in a summary process action the issues are so limited "that unless the tenant can prove payment of rent, the existence of a lease, one of the special defenses [specified by General Statutes § 47a-4a (breach of landlord's responsibilities) or General Statutes § 47a-33 (retaliatory eviction)], or superior title in the premises, he or she must yield possession." We recently held in *Fellows* v. *Martin*, 217 Conn. 57, 62, A.2d (1991), "that there is no longer sufficient justification for the old prohibition against the application of equitable principles barring forfeitures to summary process; that the prohibition, arising from an obsolete system, is itself obsolete; and that equitable defenses and counterclaims implicating the right to possession are available in a summary process proceeding." The majority opinion alludes to *Fellows* in a footnote, but does not purport to distinguish or overrule it. Thus, the law of summary process is left in a perplexing state, bound to create confusion in the lower courts.

In the present case, the special defenses and the counterclaim, which sought only equitable relief, did implicate the right to possession of the premises,

because the defendants claimed they were entitled to occupy the premises, despite their failure to pay rent, until they were able to exercise the right granted by General Statutes § 21-79 (e) to sell their mobile home together with a right accorded to the purchaser to continue occupying the premises. Although I agree that this claim of the defendants is unsound, I conclude that the trial court should have addressed it on its merits, as the majority has done in Part II.

# JEFFREY P. OSSEN *v.* GAIL WANAT ET AL.
## (7575)

SPALLONE, DALY and NORCOTT, Js.

The plaintiff sought, by way of a summary process action, to recover possession of a mobile home site occupied by the defendants allegedly pursuant to a month-to-month lease. The trial court rendered judgment for the plaintiff, and the defendants appealed to this court. *Held:*

1. The record contained ample evidence to support the trial court's determination that the parties began an oral month-to-month tenancy at the termination of their earlier written lease for the property, and that the defendants had failed to pay the rent due and owing for the period alleged in the complaint.
2. The defendants could not prevail on their claim that the trial court erred in denying their motion for permission to sell the mobile home during the pendency of the summary process action in order to pay arrearages owed to the plaintiff; there is no statutory authority for such a procedure once a summary process action has been commenced.
3. The trial court did not err in refusing to consider, as beyond the scope of the proceedings, constitutional claims raised by the defendants in two of their special defenses.
4. There was no merit to the defendants' claim that because the plaintiff had failed to serve a notice to quit on an alleged subtenant, E, the trial court erred in denying both their motion to dismiss the action and E's claim for exemption; that court's determination that E was not an occupant of the premises at the time of the commencement of the summary process action was not clearly erroneous.
5. The trial court did not abuse its discretion in taxing expenses, including attorney's fees, in favor of the plaintiff.

Argued January 3—decision released March 13, 1990

Summary process action, brought to the Superior Court in the judicial district of New Haven, Housing Session at Meriden, and tried to the court, *Gaffney, J.*; judgment awarding possession to the plaintiff; thereafter, the court awarded costs and attorney's fees to the plaintiff, and the defendants appealed to this court; subsequently, the court, *Ripley, J.*, denied a motion for exemption from judgment filed by Laura Ellis, and the defendants filed an amended appeal. *No error.*

*F. Woodward Lewis, Jr.*, with whom was *Robert J. Mead*, for the appellants (defendants).

*Barry T. Pontolillo*, with whom, on the brief, was *M. Frances Reese*, for the appellee (plaintiff).

NORCOTT, J. This appeal involves a summary process action in which the trial court rendered judgment in favor of the plaintiff, Jeffrey P. Ossen. The defendants[1] appeal from that judgment claiming that the trial court erred (1) in finding that an oral month-to-month tenancy existed between the plaintiff and the defendant Gail Wanat, (2) in refusing to allow the defendants to sell their mobile home on the leased park site during the pendency of the summary process action, (3) in refusing to consider constitutional challenges to the summary process action,[2] (4) in denying the defendants'

[1] The defendants are Gail Wanat, owner of the mobile home, Joseph Driscoll and Eugene Ellis, estranged husband of Gail Wanat's daughter, Laura Ellis.

[2] The defendants' constitutional issues were set forth in their first and second "substituted special defenses" as follows:

"First Special Defense

• • •

"6. The summary process statutory procedure for mobile homes in Connecticut is unconstitutional as applied in this case because the plaintiff's taking of the equitable property interest in the defendant's mobile home is a taking without notice of the interest being taken, a taking without a hearing as to the value of the said equitable interest and, finally, it is a taking without just compensation in violation of Article Five and the due process requirements of notice and an opportunity to be heard of Article Five of the Fourteenth Amendment of the United States Constitution, and including violations of Article I, Section 10 of the Constitution of the State of Connecticut when the defendant is not being allowed to sell her mobile home on the lot.

"Second Special Defense

• • •

"6. The summary process statutory procedure for mobile homes in Connecticut is unconstitutional as applied in this case because the plaintiff's taking of the equitable property interest in the defendant's mobile home is also a violation of the equal protection clause of the Fourteenth Amendment because it has the effect of taking an equitable property interest with-

motion to dismiss and Laura Ellis' claim for exemption from judgment because of a lack of service on her of a notice to quit, and (5) in taxing expenses, including attorney's fees, on the defendants. We find no error.

The following procedural history is germane to this appeal. In 1985, the plaintiff and the defendant Gail Wanat entered into a written lease for lot twenty-four of the Three Oaks Mobile Home Park in Wallingford, owned by the plaintiff. On March 16, 1985, the plaintiff served the defendants with a notice to quit for failure to pay rent; he also informed the defendants, in a letter dated April 8, 1985, that future rental payments would be refused. No further action was taken on this notice to quit, even though the defendants continued to live in the mobile home, without paying rent, until 1988.

On May 14, 1988, the plaintiff served the defendants with another notice to quit, this one purporting to terminate an oral month-to-month agreement that existed between the parties since 1985. On July 7, 1988, the plaintiff filed the present action alleging the termination of an oral lease and demanding immediate possession.

On August 15, 1988, after Wanat informed the plaintiff of her desire to sell the mobile home, the defendants moved for a stay of the proceedings, and the next day the defendants filed a motion for permission to sell the mobile home. The trial court, *Gaffney, J.*, denied

out notice, hearing or compensation as a result of 'summary process action.' It also has the effect of treating mobile home owners differently from all of the other tenants in the state in that the taking of the equitable interest in other homeowners' property requires a foreclosure action, and including violations of Article 1, Section 20 of the Constitution of the State of Connecticut when the defendant is not being allowed to sell her mobile home on the lot."

both motions. On October 21, 1988, the trial court granted the plaintiff's motion to strike the defendants' twelve special defenses and a counterclaim asserting that the defendants were unjustly denied the right to sell their mobile home pursuant to the procedures set forth in General Statutes § 21-79.[3] The defendants moved to dismiss the proceeding because the notice to quit was not served on Laura Ellis, daughter of the defendant Gail Wanat and an alleged subtenant, and therefore did not meet the requirements of General Statutes § 47a-26h. After a hearing, this motion too was denied by the court. Thereafter, on November 18, 1988, the court, *Gaffney, J.*, rendered judgment awarding possession to the plaintiff. The court reserved judgment, pending another hearing, on the plaintiff's motion for taxation of costs.

On January 31, 1989, Judge Gaffney issued a memorandum of decision in which he taxed expenses in favor of the plaintiff in the amount of $25 and allowed him to recover attorney's fees in the amount of $250 because of the weakness of the defendants' case and because of the defendants' "abusive pleadings." The defendants' appeal followed.

After this appeal had been filed, Laura Ellis filed a claim for exemption on March 29, 1989. She based her claim upon the same argument asserted in the defendants' motion to dismiss, that she was entitled to notice because she was a subtenant in the mobile home. The

[3] "[General Statutes ] Sec. 21-79. OWNER PROHIBITED FROM RESTRICTING RESIDENT'S RIGHT TO SELL. (a) No owner or operator of a mobile manufactured home park shall require a resident who owns a mobile manufactured home which is safe, sanitary and in conformance with aesthetic standards to remove the home from the development at the time such mobile manufactured home is sold or a mortgage on such a home is foreclosed provided that the purchaser or foreclosing mortgagee shall assume and be bound by the rental agreement of the foreclosed mortgagor and shall be bound by the rules and regulations of the park."

court, *Ripley, J.*, denied her claim, and the defendants filed an amended appeal raising this denial as part of their issue that the trial court erred in finding that Laura Ellis was not entitled to notice.

With respect to the defendants' first claim of error, we note that the single issue in the underlying summary process action was whether the defendants had failed to pay the rent due and owing to the plaintiff for the period noticed in the complaint. The record clearly supports the court's conclusion that they had not paid the rent. The record also contains ample evidence from which the court could reasonably have concluded that the parties began an oral month-to-month tenancy at the termination of their written lease. On review, we will not invade the factfinding province of the trial court or disturb its legal conclusions when they are sufficiently supported by the evidence before it. *Bowman* v. *1477 Central Avenue Apartments, Inc.*, 203 Conn. 246, 256–57, 524 A.2d 610 (1987).

The defendants next argue that the trial court erred in denying their motion to sell their mobile home during the pendency of a summary process action in order to satisfy arrearages owed the plaintiff. As authority for their right to sell, the defendants cite General Statutes § 21-79. "Section 21-79 protects tenants at mobile home parks from being forced to sell to park owners at a substantial loss and as a consequence benefits many low income people who cannot otherwise afford to purchase more expensive housing." *Eamiello* v. *Liberty Mobile Home Sales, Inc.*, 208 Conn. 620, 648, 546 A.2d 805 (1988), appeal dismissed, U.S. , 109 S. Ct. 1104, 103 L. Ed. 2d 169 (1989). General Statutes § 21-80 (b) (1) (A), on the other hand, specifically provides in pertinent part that "an owner [of a mobile manufactured home park] may terminate a rental agreement or maintain a summary process action against a resident who owns his mobile manufactured

home only for one or more of the following reasons: (A) Nonpayment of rent, utility charges or reasonable incidental services charged . . . ." Furthermore, "[s]ection 21-80 (b) (4) provides that unless otherwise specified, 'proceedings under this chapter [412] shall be prescribed under Chapter 832,' the general summary process chapter." *Ossen* v. *Kreutzer*, 19 Conn. App. 564, 569, 563 A.2d 741 (1989). It is clear from a review of the relevant statutes that they provide for no such procedure as the defendants suggest, namely, selling the mobile home to pay rent arrearages once a summary process action for nonpayment of rent has begun.

The defendants' next claim requires little discussion. In essence, the defendants claim that the trial court's interpretation of the statutory scheme addressing summary process and mobile homes resulted in a deprivation of their constitutional right to sell their mobile home. We disagree.

Summary process is a straightforward action limited to a few simple questions of fact. *Davidson* v. *Poli*, 102 Conn. 692, 695, 129 A.2d 716 (1925); *Yarbrough* v. *Demirjian*, 17 Conn. App. 1, 3, 549 A.2d 283, cert. denied, 209 Conn. 828, 552 A.2d 434 (1988); *Scinto* v. *Bridgeport Cash & Carry, Inc.*, 38 Conn. Sup. 514, 516–17, 452 A.2d 940 (1980). While in certain cases complex issues may necessarily be a part of the action; *Southland Corporation* v. *Vernon*, 1 Conn. App. 439, 445–51, 473 A.2d 318 (1984); the ordinary summary pace cannot be "stalled by the defendant's simply raising the spectre of a complexity which is not . . . rooted in the nature of the relationship between landlord and tenant and in the basis of the landlord's claim to possession; or simply by the defendant's threat to

[4] As this court acknowledged in *Southland* v. *Vernon*, 1 Conn. App. 439, 451, 473 A.2d 318 (1984), the judges who are presented with a case involving claims of undue complexity in summary process actions "are more than able to glean the wheat from the chaff."

raise complex defenses which are not likely to be asserted in good faith . . . ." (Footnote omitted.) Id., 450–51. The resolution of the complex constitutional issues, which the court found were not brought in good faith, has no place in this summary process action. We agree with the trial court's conclusion that the constitutional issues that the defendants attempted to raise "are far beyond the scope of the statutory action that is before the Court." The trial court did not err in refusing to consider the defendants' constitutional claims in the context of this summary process action and in striking them from the pleadings.[4]

The defendants' claims that the court erred in denying their motion to dismiss and Laura Ellis' subsequent claim of exemption from judgment are also without merit. The defendants argue that Laura Ellis, Wanat's daughter, should have been a defendant in this action and was entitled to notice because she was a "subtenant" in the mobile home whose presence was known to the landlord. In a hearing on the motion to exempt, the court, *Ripley, J.*, heard testimony from both mother and daughter and from the plaintiff. After the hearing, the court concluded, in a written memorandum of decision dated May 10, 1989, that "the plaintiff has demonstrated through the testimony of the claimant that she was not an occupant of the premises at the time of commencement of the summary process action," and that, accordingly, she was not entitled to notice under law.

The weight and credibility to be accorded witnesses is totally within the purview of the trier of fact. *Temple* v. *Meyer,* 208 Conn. 404 , 407, 544 A.2d 629 (1988); *State* v. *Crump,* 201 Conn. 489, 491, 518 A.2d 378 (1986). Absent any clear error, we will not disturb the trial court's legal conclusions that are based on ample evidence in the record. *Temple* v. *Meyer,* supra. There is no such error here.

The defendants finally contend that the trial court erred in taxing expenses, including attorney's fees, in favor of the plaintiff. We disagree.

Practice Book § 111[5] authorizes the trial court to tax reasonable expenses, including attorney's fees incurred by an opposing party, when the court finds that a party has made an allegation or denial in the pleadings that is without reasonable cause and is untrue. This section, in effect, authorizes the court to impose sanctions on a party for resorting to bad faith pleading. Here, Judge Gaffney found that the defendants' answer, a general denial coupled with twelve special defenses that went beyond the scope of the summary process action, constituted improper pleading and was "calculated to enhance the plaintiff's burden of proof."

"[T]he task of determining whether sanctions should be imposed is inherently fact bound, and requires carefully circumscribed discretion to be exercised by the trial court." *Fattibene* v. *Kealey*, 18 Conn. App. 344, 362, 558 A.2d 677 (1989). Good faith pleading must be judged in the light of all the circumstances existing at the time the pleading was filed. *State* v. *Anonymous (1974-5)*, 31 Conn. Sup. 179, 180-81, 326 A.2d 837 (1974); see also 1 W. Moller & W. Horton, Connecticut Practice Book Annotated (1989) § 111, p. 279. "To determine whether the bad faith exception applies, the court must assess whether there has been substantive bad faith as exhibited by, for example, a

[5] Practice Book § 111 provides:

"Sec. 111. —UNTRUE ALLEGATIONS OR DENIALS

"Any allegation or denial made without reasonable cause and found untrue shall subject the party pleading the same to the payment of such reasonable expenses, to be taxed by the court, as may have been necessarily incurred by the other party by reason of such untrue pleading; provided that no expenses for counsel fees shall be taxed exceeding two hundred fifty dollars for any one offense. Such expenses shall be taxed against the offending party whether he prevails in the action or not."

party's use of oppressive tactics *or its wilful violations of court orders;* '[t]he appropriate focus for the court . . . is the conduct of the party in instigating or maintaining the litigation.' " (Emphasis added.) *Fattibene* v. *Kealey,* supra, 361.

The court, in its memorandum of decision, carefully reviewed the entire pleadings. In so doing, it specifically noted that, by renewing in later pleadings three of their twelve special defenses previously stricken, the defendants wilfully violated the order to strike and exhibited an attitude toward the pleadings that the court found not to be conducive to good faith pleading. In our review of the trial court's action, we find that the trial court did not abuse the discretion vested in it by Practice Book § 111 in taxing the defendants $25 in expenses and $250 in counsel fees.[6]

There is no error.

In this opinion the other judges concurred.

## APPENDIX C

### C.G.S. §12-412c

### MOBILE MANUFACTURED HOME SUBJECT TO SALES TAX WHEN SOLD BY MANUFACTURER AND SUBJECT TO TAX AS A CONVEYANCE OF REALTY WHEN SOLD BY OWNER AT ITS LOCATION IN A MOBILE MANUFACTURED HOME PARK.

(a) On and after July 1, 1986, the sale of a new mobile manufactured home from a manufacturer shall be subject to sales tax under this chapter, except that for purposes of said tax the sales price of such new mobile manufactured home shall be deemed to be seventy per cent of the manufacturer's sales price applicable with respect to such sale. For the purpose of this subsection, "mobile manufactured home" means a home at least twelve feet in width, which cannot proceed under its own power, which is towed or placed on flatbed trucks to be taken to its destination and which requires a limited duration over-size load permit in order to be transported on the highways of this state.

(b) On and after July 1, 1986, the resale of any mobile manufactured home located in a mobile manufactured home park licensed pursuant to chapter 412 or located on a single-family lot as a permitted nonconforming use or as otherwise permitted by the zoning regulations of the municipality in which the home is located, shall be exempt from the sales tax imposed by this chapter and shall be taxed as a conveyance of realty in accordance with the provisions of chapter 223.

## APPENDIX D

## C.G.S. §21-67a

### DOCUMENTS CONCERNING MOBILE MANUFACTURED HOMES AND MOBILE MANUFACTURED HOME PARKS TO BE FILED IN TOWN CLERK'S OFFICE FOR RECORDING IN LAND RECORDS.

(a) LIST OF HOMES AND OWNERS THEREOF IN EACH PARK TO BE FILED BY PARK LICENSEE. Not later than October 1, 1986, the licensee of any mobile manufactured home park licensed under this chapter shall file with the town clerk, for purposes of recording in the land records of the municipality in which the park is located, a list containing all mobile manufactured homes in the park on the date of such filing, the name and address of the owner of each mobile manufactured home as appearing on its records and the lot number or location of each mobile manufactured home in the park. Each list shall contain a certification that the licensee is duly licensed by the state of Connecticut and said certification shall contain the park's license number. Each park licensee shall pay to the town clerk for recording the list, five dollars per page plus fifty cents for each owner's name to be indexed in excess of four names per page. The department of consumer protection shall ensure that each licensee is in compliance with this section.

(b) CERTIFICATE OF TITLE TO MOBILE HOME OR OTHER EVIDENCE OF OWNERSHIP TO BE FILED BY OWNER OF MOBILE HOME. Any person owning a mobile manufactured home on or after October 1, 1986, shall file with the town

clerk of the municipality in which the mobile manufactured home is located a certificate of title, bill of sale or other document evidencing the person's ownership of the mobile manufactured home. On or after October 1, 1986, any person holding a security interest in any such mobile manufactured home may file the security interest for recording in the land records of the municipality in which the mobile manufactured home is located.

(c) PROCEDURE IN CONVEYANCE OF MOBILE HOME. On or after October 1, 1986, conveyances of title of mobile manufactured homes in mobile manufactured home parks licensed under this chapter or located on single-family lots owned by a person other than the homeowner shall comply with the following requirements: (1) The document conveying the title shall contain a description of the mobile manufactured home, setting forth the name of the manufacturer, the model number, the serial number and all encumbrances on the home, and shall contain the name and address of the mobile manufactured home park in which the home is located, including lot number, if any, within the park, or for those homes not situated in mobile manufactured home parks, the name and address of the individual owning the lot on which the home is located and the address of the lot; (2) the document conveying title shall be filed in the town clerk's office of the municipality in which the home is located for recording on the land records; and (3) any taxes imposed as provided in subsection (b) of section 12-412c which have become due shall

have been paid in full. No purchaser of the mobile manufactured home shall be entitled to assume the tenancy or rental agreement of the seller in a mobile manufactured home park until such purchaser has complied with subdivisions (2) and (3) of this subsection.

(d) DOCUMENTS TRANSFERRING TITLE TO A MOBILE HOME. Any document transferring title to a mobile manufactured home located in a mobile manufactured home park or on a single family lot, when duly executed and recorded in accordance with subsection (c) of this section, shall have the force and effect of the equivalent statutory form deed as provided for in section 47-36c.

(e) ANY DOCUMENT CREATING AN ENCUMBRANCE OR SECURITY INTEREST WITH RESPECT TO A MOBILE HOME. On or after October 1, 1986, any public documents purporting to create an encumbrance upon a mobile manufactured home, including, but not limited to, a mortgage, a security interest, a chattel mortgage or an attachment, shall be recorded in the town clerk's office of the municipality in which the home is located. The filing of any document on said land records evidencing the encumbrance and used to perfect the encumbrance under either Connecticut motor vehicle law of Connecticut's uniform commercial code, shall be deemed compliance with subsection (b) of this section. Failure to comply with this section shall not in any way affect any security rights of the secured party in the mobile manufactured home.

## APPENDIX E

### C.G.S. §21-70

### DISCLOSURE STATEMENT. DOCUMENTS TO BE FILED WITH DEPARTMENT. NOTICE RE SALE OF PARK LAND

(a) The commissioner of consumer protection shall adopt regulations, in accordance with the provisions of chapter 54, providing for a disclosure statement which shall be used by mobile manufactured home park owners. The disclosure statement shall be a plain language summary of the rights and obligations listed in this chapter and shall not add to or diminish the rights and obligations provided by this chapter. Such disclosure statement shall include at least the following information: (1) The monthly rental fee and all considerations payable by the resident to the owner; (2) the length of the rental term; (3) the amount of land granted by the rental agreement; (4) an enumeration of goods and services to be provided to the resident, including those goods and services to be provided free of charge; (5) notice if the owner plans to terminate the operation of the park during the term of the rental agreement; (6) a statement of conditions to be complied with by the owner and resident in the event of the sale of the mobile manufactured home by the resident, including aesthetic standards for resale, which conditions shall not be altered by the owner after the rental agreement has been entered into; (7) the rights of residents regarding eviction under section

21-80; (8) the rights of residents regarding the resale of a mobile manufactured home under section 21-79; and (9) the rights of residents in the event that alterations of the rules concerning the resident's use and occupancy of the premises under subsection (b) of this section are to be made. Owners shall provide each prospective resident, before any rental agreement is entered into, and each resident, at the time of the first renewal of his rental agreement which occurs after the effective date of the regulations providing for a disclosure statement, with a completed disclosure statement. No rental agreement entered into on or after the effective date of the regulations providing for a disclosure statement shall be enforceable until the requirements of this subsection are met. A copy of such statement shall be signed by the resident at the time of the rental, acknowledging receipt of a completed, signed copy and such completed, signed copy shall be kept on file by the owner for a period of four years after such resident vacates the park.

(b) No owner may offer a mobile manufactured home or a mobile manufactured home space or lot for rent without providing the prospective resident with a copy of an initial written rental agreement before the resident occupies such mobile manufactured home or lot. All renewals offered by the owner to a resident shall be in writing. No owner may rent a mobile manufactured home or mobile manufactured home space or lot until a written rental agreement has been signed by the resident and the owner.

The term of such rental agreement shall not be less than one year unless the resident requests, in writing, a term for less than one year. No rental agreement shall provide in any manner for the waiver of any provision of this chapter. An owner, from time to time, may adopt a rule or regulation, however described, concerning the resident's use and occupancy of the premises. Such rule or regulation shall be enforceable against the resident only if (1) the purpose of the rule or regulation is to promote the convenience, safety or welfare of the residents, preserve the owner's property from abusive use or make a fair distribution of service and facilities held out for the residents generally; (2) such rule or regulation is reasonably related to the purpose for which it is adopted; (3) such rule or regulation applies to all residents on the premises in fair manner, provided reasonable exemptions may be made for good cause; (4) such rule or regulation is sufficiently explicit in its prohibition, direction or limitation of the resident's conduct to fairly inform him of what he shall or shall not do to comply, and (5) the resident has written notice of such rule or regulation at the time he enters into the rental agreement or when such rule or regulation is adopted. A rule or regulation having the effect of substantially modifying the terms of a rental agreement previously entered into by resident shall not apply to such rental agreement without the written consent of the resident.

(c) Each owner shall file with the department of consumer protection copies of the park's rental agreements, aesthetic standards to be complied with by the owner and resident in the event of the sale of the mobile manufactured home by the resident, and rules or regulations concerning the resident's use and occupancy of the premises. Any change in the documents required to be filed under this subsection, other than a change in rent, shall be filed with the department of consumer protection. No rental agreements, aesthetic standards, or rules or regulations, and no changes in the terms of provisions of such documents, other than a change in rent, shall be effective until such documents or changes are filed with the department of consumer protection.

(d)(1) Any person making an application to appear before any municipal, state or federal agency with respect to any matter changing the land use of a specific mobile manufactured home park shall give written notice of the application by first class mail addressed to the affected units of the park or by personal delivery to the units within seven days after its filing. The notice shall state the reasons for which the application was filed.

(2) Any mobile manufactured home park owner who intends to sell land used as a mobile manufactured home park shall give written notice by first class mail addressed to each mobile home unit or by personal delivery to each unit upon such land if such transaction will entail the discontinuance

of the use of the land for mobile manufactured home park purposes. If an owner of a mobile manufactured home has given the park owner written notice that he resides in a place other than his unit, notice shall be sent by first class mail to the address so provided. The notice shall include a statement advising the recipient of the intended sale and shall be mailed or delivered at least ninety days prior to the sale. The notice may run concurrently with the notice required by subdivision (3) of subsection (a) of section 21-80 or subparagraph (e) of subdivision (1) of subsection (b) of section 21-80.

## APPENDIX F

### C.G.S. §21-79

### OWNER PROHIBITED FROM RESTRICTING RESIDENT'S RIGHT TO SELL.

(a) No owner or operator of mobile manufactured home park shall require a resident who owns a mobile manufactured home which is safe, sanitary and in conformance with aesthetic standards to remove the home from the development at the time such mobile manufactured home is sold or a mortgage on such a home is foreclosed provided that the purchaser or foreclosing mortgagee shall assume and be bound by the rental agreement of the foreclosed mortgagor and shall be bound by the rules and regulations of the park.

(b) A mobile manufactured home shall be presumed to be safe and sanitary if it is established that the mobile manufactured home was constructed in accordance with any nationally recognized building or construction code or standard. Failure to meet any such standard or the provisions of any such code shall not automatically raise a presumption that the mobile manufactured home is unsafe or unsanitary. Such failure shall not be used as a reason for withholding approval of an on-site sale unless such failure renders the mobile manufactured home unsafe or unsanitary.

(c) The owner of mobile manufactured home park shall bear the burden of showing that a mobile manufactured home is unsafe, unsanitary, or fails to meet the aesthetic standards of the development. No aesthetic

standard concerning those physical characteristics such as size, original color or original building materials, which cannot be changed without undue financial hardship to the resident, shall be applied against a mobile home.

(d) Any purchaser of a mobile manufactured home sold by a resident may become a resident of the mobile manufactured home park provided he meets the entry requirements for said park and such requirements are equally applied by the owner to all purchasers and prospective residents and the owner approves such entry. Such approval may not be withheld except for good cause. For the purposes of this section good cause means a reasonable cause for the owner to believe (1) that such purchaser intends to utilize the purchased mobile manufactured home for an illegal or immoral purpose or for any purpose that would disturb the quiet enjoyment of the other residents of the park or (2) that the purchaser is or will be financially unable to pay the rent for the space or lot upon which the purchased mobile manufactured home is located. If the owner denies approval to a purchaser, he shall, in writing, state any reason for such disapproval. Such statement shall be delivered to the resident and the purchaser or prospective resident within ten days after the owner receives the completed application of the purchaser or prospective resident. Failure to deliver such notification within ten days shall be deemed to be approval.

(e) Any resident wishing to sell his or

her home shall request a written statement of the owner's intentions regarding the condition of the home. Within twenty days after receipt of such a request, the owner shall approve the home's condition for resale or deliver a written statement to the resident specifying the reasons why the home is not safe, sanitary, or in conformance with aesthetic standards. Failure of the owner to respond within twenty days shall be deemed to be an approval of the home's condition for resale. If the resident disputes the owner's response, he may seek a declaratory ruling from the department of consumer protection. The resident may attempt to correct defects identified by the owner and may again request the owner's approval of the home's condition for resale. If the resident again disputes the owner's response, he may once again seek a declaratory ruling from the department. An owner's statement of approval shall remain in force for not more than six months. No owner shall exact a commission or fee with respect to the price realized by the seller, unless he has acted as agent for the seller in a sale pursuant to a written contract, or charge a rent for the mobile manufactured home space or lot upon which the purchased mobile manufactured home is located greater than the prevailing rent for any other space or lot located in the park.

## APPENDIX G

## C.G.S. §21-80

### GROUNDS FOR SUMMARY PROCESS OR TERMINATION OF RENTAL AGREEMENT. PROCEDURE FOR SUMMARY PROCESS ACTION OR TERMINATION OF RENTAL AGREEMENT. RENT INCREASES.

(a) An action for summary process may be maintained by the owner of a mobile manufactured home park against a mobile manufactured home resident, who rents his mobile manufactured home from such owner, for the following reasons which shall be in addition to other reasons allowed under chapter 832 and except as otherwise specified, proceedings under this section shall be as prescribed in said chapter 832:

(1) A conviction of the resident of a violation of a federal or state law or local ordinance which the court finds to be detrimental to the health, safety and welfare of other residents in the park but no notice to quit possession shall be required;

(2) The continued violation of any reasonable rule established by the owner, provided a copy of such rule has been delivered by the owner to the resident prior to entering into a rental agreement and a copy of such rule has been posted in a conspicuous place in the park and, provided further the resident receives written notice of the specific rule or rules being violated at least thirty days before the

time specified in the notice for the resident to quit possession of the mobile manufactured home or occupancy of the space or lot; or

(3) A change in use of the land on which such mobile manufactured home is located, provided all the residents affected are given written notice at least three hundred sixty-five days before the time specified in the notice for the resident to quit possession of the mobile manufactured home or occupancy of the lot.

(b)(1) Notwithstanding the provisions of section 47a-23, an owner may terminate a rental agreement or maintain a summary process action against a resident who owns his mobile manufactured home only for one or more of the following reasons:

(A) Nonpayment of rent, utility charges or reasonable incidental services charges;

(B) Material noncompliance by the resident with any statute or regulation materially affecting the health and safety of other residents or materially affecting the physical condition of the park;

(C) Material noncompliance by the resident with the rental agreement or with rules or regulations adopted under section 21-70;

(D) Failure by the resident to agree to a proposed rent increase, provided the owner has complied with all provisions of subdivision (5) of this subsection; or

(E) A change in the use of the land on which such mobile manufactured home is located, provided all of the affected residents receive written notice at least three hundred sixty-five days before the time specified in the notice for the resident to quit possession of the mobile manufactured home or occupancy of the lot.

(2) An owner may not maintain a summary process action under subparagraph (B), (C) or (D) of subdvision (1) of this subsection prior to delivering a written notice to the resident specifying the acts or omissions constituting the action or inaction complained of and allowing the resident twenty-one days in which to remedy such complaint.

(3) Notwithstanding the provisions of section 47a-23, termination of any tenancy in a mobile manufactured home park shall be effective only if made in the following manner.

(A) By the resident giving at least thirty days' notice to the owner;

(B) By the owner giving the resident at least sixty days' written notice, which shall state the reason or reasons for such termination, except that, when termination is based upon subparagraph (A) of the subdivision (1) of this subsection, the owner need give the resident only thirty days' written notice, which notice shall state the total arrearage due provided, the owner shall not maintain or proceed with a summary process action against a resident who

tenders the total arrearage due to the owner within such thirty days and who has not so tendered an arrearage under this subparagraph during the preceding twelve months.

(4) Except as otherwise specified, proceedings under this section shall be as prescribed by chapter 832.

(5) Nothing in this subsection shall prohibit an owner from increasing the rent at the termination of the rental agreement [if] (A) the owner delivers a written notice of the proposed rent increase to the resident at least thirty days before the start of a new rental agreement; (B) the proposed rent is consistent with rents for comparable lots in the same park; and (C) the rent is not increased in order to defeat the purpose of this subsection.

(c) Notwithstanding the provisions of sections 47a-35 and 47a-36, if judgment is entered in a summary process action against a mobile manufactured home owner and resident based upon subparagraph (D) of subdivision (1) of subsection (b) of this section, execution shall not issue until six months from the date of such judgment. The court shall condition such stay of execution upon a requirement that the mobile manufactured home owner and resident make payments to the plaintiff in the summary process action in such installments as the court may direct for the use and occupancy of the premises during the period of such stay at the rate for which such mobile manufactured home owner and resident was

most recently liable as rent or in such greater sum as is reasonable in such installments as the court may direct.

## APPENDIX H

### C.G.S. §47a-23

### NOTICE TO QUIT POSSESSION OF PREMISES. FORM. SERVICE.

(a) When the owner or lessor, or his legal representative, or his attorney-at-law, or in-fact, desires to obtain possession or occupancy of any land or building, any apartment in any building, any dwelling unit, any trailer, or any land upon which a trailer is used or stands, and (1) when a rental agreement or lease of such property, whether in writing or by parol, terminates for any of the following reasons: (A) by lapse of time; (B) by reason of any expressed stipulation therein; (C) violation of the rental agreement or lease or of any rules or regulations adopted in accordance with section 47a-9; (D) nonpayment of rent within the grace period provided for residential property in section 47a-15a; (E) nonpayment of rent when due for commercial property; (F) violation of section 47a-11; (G) nuisance as defined in section 47a-32 or serious nuisance, as defined in section 47a-15; or (2) when such premises, or any part thereof, is occupied by one who never had a right or privilege to occupy such premises other than under a rental agreement or lease but such right or privilege has terminated, such owner or lessor shall give notice to each lessee or occupant to quit possession of such land, building, apartment or dwelling unit, at least eight days before the termination of the rental agreement or lease, if any, or

before the time specified in the notice for the lessee or occupant to quit possession or occupancy.

(b) The notice shall be in writing substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the (land, building, apartment or dwelling unit, or of any trailer or any land upon which a trailer is used or stands, as the case may be), now occupied by you at (here insert the address, including apartment number or other designation, as applicable, on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession or occupancy, also the date and place of signing notice). A.B.". If the owner or lessor, or his legal representative, attorney-at-law or attorney-in-fact knows of the presence of an occupant but does not know, and in the exercise of reasonable diligence cannot discover, the name of such occupant, the notice for such occupant may be addressed to such occupant as "John Doe", "Jane Doe" or some other alias which reasonably characterizes the person to be served.

(c) A copy of such notice shall be delivered to each lessee or occupant or left at his place of residence or, if the rental agreement or lease concerns commercial property, at the place of the commercial establishment by a proper officer or indifferent person.

## APPENDIX I

### C.G.S. §47a-23a

### COMPLAINT

(a) If, at the expiration of the eight days, the lessee or occupant neglects or refuses to quit possession or occupancy of the premises, any commissioner of the superior court may issue a writ, summons and complaint which shall be in the form and nature of an ordinary writ, summons and complaint in a civil process, but which shall set forth facts justifying a judgment for immediate possession or occupancy of the premises and make a claim for possession or occupancy of the premises. If the plaintiff has properly issued a notice to quit possession to an occupant by alias, if permitted to do so by section 47a-23, and has no further identifying information at the time of service of the writ, summons and complaint may also name and serve such occupant or occupants as defendants. In any case in which service is to be made upon an occupant or occupants identified by alias, the complaint shall contain an allegation that the plaintiff does not know, and in the exercise of reasonable diligence cannot discover, the name of such occupant or occupants. Such complaint shall be returnable to the superior court. Such complaint may be made returnable six days, inclusive, after service upon the defendant and shall be returned to court at least three days before the return day. Notwithstanding the

provisions of section 52-185 no recognizance shall be required of a complainant appearing pro se.

(b) Venue for actions brought pursuant to this chapter shall be the geographical area, established pursuant to section 51-348, where the defendant resides or where the leased premises or trailer are located at the plaintiff's election or, in the case of a defendant corporation or domestic corporation, has an office or place of business. If the defendant is a nonresident, venue shall be the geographical area, established pursuant to section 51-348, where the plaintiff resides or where the land lies at the plaintiff's election.

## APPENDIX J

## C.G.S. §47-36c

## STATUTORY FORMS FOR DEEDS

The forms set forth in this section may be used and are sufficient for their respective purposes. They shall be known as "Statutory Form" and may be referred to as such. Nothing in this chapter precludes the use of any other legal form of deed or mortgage.

### WARRANTY DEED

...of...for consideration paid, grant to... of... with WARRANTY COVENANTS

(Description and Encumbrances, if any and any additional provisions)

Signed this...day of..., 19...

Witnessed by: .....

.....

(Acknowledgment)

### QUITCLAIM DEED

...of...for consideration paid, grant to... of...with QUITCLAIM COVENANTS

(Description and any additional provisions)

Signed this...day of..., 19...

Witnessed by: .....

.....

(Acknowledgment)

MORTGAGE DEED

...of...to secure payment of...dollars with interest payable as provided in a certain promissory note dated...with final maturity on...grant to...of...with MORTGAGE COVENANTS...

(Description and Encumbrances, if any and any additional provisions)

This mortgage is made upon the STATUTORY CONDITION

Signed this...day of..., 19...

Witnessed by: .....

.....

(Acknowledgment)

ASSIGNMENT OF MORTGAGE

...of...for consideration paid, assign to... all interest in a mortgage from... to...dated...and recorded in Volume... at Page...of the...Connecticut Land Records.

Signed this...day of..., 19...

Witnessed by: .....

.....

(Acknowledgment)

## CONSERVATOR'S DEED

...of...conservator of the estate of..., an incapable person, for consideration paid, grant...with CONSERVATOR'S COVENANTS

(Description and Encumbrances, if any and any additional provisions)

Signed this...day of..., 19...

Witnessed by: .....

.....

(Acknowledgment)

## TESTAMENTARY TRUSTEE'S DEED

...of..., trustee under article...of the last will and testament..., late of..., ... duly qualified as trustee, for consideration paid, grant to...with TESTAMENTARY TRUSTEE'S COVENANTS

(Description and Encumbrances if any and any other provisions)

Signed this...day of..., 19...

Witnessed by: .....

.....

(Acknowledgment)

## EXECUTOR'S DEED

...of...duly qualified and authorized executor of the last will and testament of... late of...for consideration paid, grant to...with EXECUTOR'S COVENANTS

(Description and Encumbrances if any
and any additional provisions)

Signed this...day of..., 19...

Witnessed by: .....

.....

(Acknowledgment)

ADMINISTRATOR'S DEED

...of...duly qualified and authorized administrator of the estate of...late of... for consideration paid, grant to...with ADMINISTRATOR'S COVENANTS

(Description and Encumbrances if any
and any additional provisions)

Signed this...day of..., 19...

Witnessed by: .....

.....

(Acknowledgment)

## APPENDIX K

"We conclude that Section 21-79 serves a substantial public purpose in protection the economic interests of the mobile home tenants selling their homes on site. It is undisputed that the defendant's home purchased for $12,500 in 1980 was worth $17,500 at the time of trial if sold on site, but was valued at almost $3,500 if the buyer had to move it to another location. Section 21-79 protects tenants at the mobile home parks from being forced to sell to park owners at a substantial loss and as a consequence benefits many low income people who cannot otherwise afford to purchase more expensive housing.

We also conclude that the statute does not unduly harm the economic interests of mobile home park owners. Unlike the ordinance in Hall v. Santa Barbara, our statute does not provide for rent control, and limit the owner to a below market income. General Statutes §21-80(b)(5), of course, does require that rent increases on one tenant be "consistent with rents for comparable lots in the same park." There is no restriction, however, upon a general rent increase for all of the sites within a park. A land owner also may evict a tenant in order to use the site for any purpose other than as a lot for a mobile home, although one year's notice is required. General Statutes §21-80(b)(1)(E). The only evidence of economic harm that the defendant has presented is that the tenant who sells his mobile home on-site receives a greater price for his home than it would

otherwise bring because of the right to continued occupancy of the site that is also transferred to the purchaser. Because of the scarcity of mobile home sites, resulting largely from zoning ordinances that bar the establishment of new mobile home developments, the legislature could reasonably have concluded that a substantial portion of the price paid for a mobile home purchased on-site is attributable to the continuing right to lease the site that accompanies the sale. If the mobile home park operator could require the site to be vacated, he, rather than the tenant, would be in the position to demand for a mobile home that he had placed on the site a price greater than the home itself would bring because of the right to continued occupancy that is incident to the sale. In choosing the tenant rather than the mobile home park operator as the recipient of this economic advantage arising from the near-monopoly status of the industry, the legislature, by allocating its benefit to those who generally are more in need, has not violated any constitutional principle. In our view, §21-79 strikes a reasonably fair balance between the economic interests of mobile home tenants and those of mobile home park operators. Accordingly, we conclude that the state does not violate the takings clause of the fifth amendment to the United States Constitution." ... Eamiello v. Liberty Mobile Homes Sales, Inc., 208 Conn. 620, 648, 546 A.2d 805 (1988).